

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

UNITED STATES OF AMERICA )  
                                )  
                                )  
                                ) Case No. 1:07CR00028  
                                )  
v.                               )  
                                )  
                                )  
**DEMETRIUS TYRONE GARDNER,**     )     )  
                                )     )  
                                )     )  
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Defendant.                    )

For the reasons set forth in the Opinion accompanying this Final Order, it is  
**ORDERED** as follows:

1. The government's Motion to Dismiss (ECF No. 100) is DENIED;
2. The defendant's Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C.A. § 2255 (ECF No. 94) is GRANTED and his prior sentence is VACATED, effective upon his resentencing; and
3. The clerk shall arrange for the defendant's present appointed counsel to be appointed to represent him for resentencing.

ENTER: April 27, 2012

/s/ James P. Jones  
United States District Judge